

RESOLUTION NO. 2009-250

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ELK GROVE
AUTHORIZING THE CITY MANAGER TO EXECUTE A LICENSE AGREEMENT
FOR THE USE OF LAND AS A COMMUNITY GARDEN BY AND
BETWEEN THE CITY OF ELK GROVE AND THE
ELK GROVE COMMUNITY GARDEN AND LEARNING CENTER**

WHEREAS, the City of Elk Grove owns land at the intersection of Hampton Oak Drive and Iron Rock Way that is currently a community garden; and

WHEREAS, the garden is maintained by the Elk Grove Community Garden and Learning Center members and volunteers; and

WHEREAS, the City desires to continue to operate the land as a community garden for the benefit of the public.

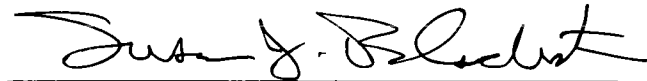
NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Elk Grove hereby authorizes the City Manager to execute a License Agreement for the Use of Land as a Community Garden by and between the City of Elk Grove and the Elk Grove Community Garden and Learning Center, substantially in the form attached hereto as Exhibit A and incorporated herein by this reference.

PASSED AND ADOPTED by the City Council of the City of Elk Grove this 9th day of December 2009.



PATRICK HUME, MAYOR of the
CITY OF ELK GROVE

ATTEST:



SUSAN J. BLACKSTON, CITY CLERK

APPROVED AS TO FORM:



SUSAN COCHRAN, CITY ATTORNEY

EXHIBIT A



**LICENSE AGREEMENT
FOR THE USE OF LAND AS A COMMUNITY GARDEN
by and between
THE CITY OF ELK GROVE
and
ELK GROVE COMMUNITY GARDEN AND LEARNING CENTER**

This is a license agreement, made as of _____, 2009, between CITY OF ELK GROVE (CITY), and ELK GROVE COMMUNITY GARDEN AND LEARNING CENTER, a 501 (c)(3) corporation, (Elk Grove Community Garden).

1. **PURPOSE OF LICENSE AGREEMENT:** CITY, as the owner of land described below, acknowledges that the creation and management of a community garden on this land by the past and present members of the Elk Grove Community Garden represents the establishment of a valuable neighborhood resource. CITY is pleased to sponsor and promote the use of the land for the benefit of the general public by allowing Elk Grove Community Garden members, their guests and the public to continue to use the land as a community garden subject to the terms of this license agreement.
2. **LAND:** CITY is the owner of a parcel (or parcels) of land located at the NE intersection of Hampton Oak Drive and Iron Rock Way in the CITY. The land, also referred to throughout this agreement as the Garden, is known on the Assessor's Parcel Map as APN 134-0740-042-0000.
3. **USE FEE:** Elk Grove Community Garden will be charged One Dollar (\$1.00) per year for this license to use the Garden.
4. **LENGTH OF LICENSE AGREEMENT:** This license agreement will begin on October 20, 2009 and will end on October 19, 2014, or earlier subject to Paragraphs 9 and 10 below. Elk Grove Community Garden shall have the right to extend the Term of this License for One (1) period of Five (5) years, under the same terms and conditions contained in this License.

To exercise the option to extend the Term of this License, Elk Grove Community Garden shall serve written notice to the CITY, no less than 90 days prior to the expiration of the Term indicating its intention to exercise the option to extend.
5. **RESPONSIBILITIES OF THE ELK GROVE COMMUNITY GARDEN:** The Elk Grove Community Garden will be responsible for creating, maintaining



and/or improving the land as a community garden. These responsibilities will include, but not be limited to, the following:

- (A) Keeping the entire Garden property clean and safe for public use, including maintaining the sidewalks free of trash, debris, snow, ice and other obstructions to pedestrians;
- (B) Caring for trees, plants, vegetables, herbs, flowers and landscaped areas of the Garden, including watering, cultivating, pruning, fertilizing, etc.;
- (C) Making necessary repairs to constructed or manufactured items or features in the Garden, including but not limited to, raised beds, tables, benches, structures, pathways, and ornamental items in the Garden; and
- (D) Being respectful of neighbors and the quality of life of the community in the immediate vicinity of the Garden.

6. **PUBLIC ACCESS:** Elk Grove Community Garden agrees to open the Garden to the public for a minimum of six public events a year. The events will be posted in various publications which could include the City's newsletter, Elk Grove Citizen, press releases as well as posted on the garden main gate. Hours of general public access as well as public event access will be posted on a sign readable to individuals passing the garden on foot in two inch font. The sign will include the name and telephone number of the contact person for the Elk Grove Community Garden or other information on how to contact the Elk Grove Community Garden. For each of the public events, except events conducted by the City of Elk Grove such as composting workshops, the community garden shall obtain any necessary permits.

7. **RESTRICTIONS ON USE OF GARDEN:**

- (A) The land will be used as a community garden for the benefit of the public only and not for residential, commercial or industrial purposes. The garden may use the premises during public events to sell items for non-profit fundraising events. Any Use Agreement, procedures, guidelines or other regulations regarding use of the Garden by the public are subject to approval and disapproval by the City Manager and the City Attorney.
- (B) No new improvement or structure of any kind, including without limitation classrooms, shops, nurseries, casitas, sheds and gazebos, will be built in the Garden without the prior approval of CITY. The Elk Grove Community Garden may build or place in the



Garden raised planting beds, tables, chairs, benches, trellises or other ornamental features, as long as they are within the fenced area of the Garden.

- (C) All structures built by the Elk Grove Community Garden or by any previous person or group of gardeners existing in the Garden at the time of the signing of this license agreement are the responsibility of the Elk Grove Community Garden. Existing structures present on the site include two temporary storage sheds and shade cover. By signing this agreement, the Elk Grove Community Garden states that all existing structures in the Garden are safe and are not a danger to any individual or persons using the Garden.
- (D) No alcohol can be consumed, produced or sold in or around the Garden.
- (E) No illegal activity or nuisance is permitted in or around the Garden, including but not limited to drug sales or use, gambling, keeping dangerous animals, loud music or excessive noise.
- (F) No automobiles, trucks or other motorized vehicles can be stored or parked at any time in the Garden.

8. **INSURANCE:** Elk Grove Community Garden shall maintain during the term of this agreement General Liability Insurance.

- (A) The General Liability Insurance must be written on an occurrence basis with minimum limits of \$1,000,000 per occurrence and \$2,000,000 per policy aggregate. A provision or endorsement shall become a part of such policy which includes as Additional Insured the City of Elk Grove, its officers, employees, agents, boards, commissions, contractors, and volunteers.
- (B) The Elk Grove Community Garden shall provide to the City of Elk Grove a Certificate of Insurance evidencing valid insurance and which will state that a 30 day notice will be sent to the City in case coverage is suspended, voided, canceled, or terminated.
- (C) If the garden acquires vehicles or employees they shall notify the City immediately to modify insurance requirements.

9. **TERMINATION OF LICENSE AGREEMENT WITH WRITTEN NOTICE:** The Elk Grove Community Garden and the CITY shall each have the unconditional right to terminate this license agreement upon ninety (90) days advance written notice to the other party.



10. TERMINATION OF LICENSE AGREEMENT WITHOUT WRITTEN

NOTICE: This agreement may be terminated by CITY without prior written notice to the Elk Grove Community Garden for any of the following violations of this agreement provided the Elk Grove Community Garden fails to correct the violation after CITY has first consulted or made reasonable efforts to consult with the Elk Grove Community Garden, unless an emergency situation of public safety exists which makes such consultation impractical, at which time termination may be immediate.

- (A) Use of the Garden for any illegal purpose.
- (B) Creation of a danger to the neighborhood, such as accumulation of garbage, existence of a fire hazard, or any other condition potentially harmful to the Garden or other persons or property near the Garden.
- (C) Abandonment of the Garden by failing to fulfill Subsections (A) through (D) of Section 5 of this license agreement.
- (D) Breach of any term of this license agreement.

11. RESULT OF TERMINATION OR EXPIRATION OF LICENSE

AGREEMENT: If this license agreement is terminated with or without written notice to the Elk Grove Community Garden, or if the license agreement expires (provided the Elk Grove Community Garden received at least 30 days written notice of the opportunity to renew the agreement), then the Elk Grove Community Garden, if it has not already done so, must leave the Garden and provide CITY with the keys to all gates, sheds, structures, storage containers, etc.

12. INDEMNIFICATION: The Elk Grove Community Garden is an independent contractor and shall have no authority to bind City nor to create or incur any obligation on behalf of or liability against City, whether by contract or otherwise, unless such authority is expressly conferred under this Agreement or is otherwise expressly conferred in writing by City. City and their elected and appointed officials, officers, agents, employees, and volunteers (individually and collectively, "Indemnities") shall have no liability to Elk Grove Community Garden or to any other person for, and Elk Grove Community Garden shall indemnify, defend, protect, and hold harmless the Indemnities from and against, any and all liabilities, claims, actions, causes of action, proceedings, suits, damages, judgments, liens, levies, costs, and expenses of whatever nature, including reasonable attorneys' fees and disbursement, including without limitation expert's fees and disbursements (collectively "Claims"), which the Indemnities may suffer or incur or to which the Indemnities may become subject by reason of or arising



out of any activity occurring on the Real Property to the extent caused by a negligent act or omission of the Elk Grove Community Garden, any subcontractor, anyone directly or indirectly employed by the Elk Grove Community Garden or anyone for whose acts any of the Elk Grove Community Garden may be liable, except such loss or damage which was caused by the active negligence or willful misconduct of the City.

13. **REMOVAL OF PERSONAL PROPERTY AFTER TERMINATION:** Once this license agreement expires or is terminated for any reason, the Elk Grove Community Garden will remove from the Garden all personal property belonging to the Elk Grove Community Garden. The following items are NOT the personal property of the Elk Grove Community Garden and will remain in the Garden: plants, trees, shrubs and any vegetation; and any improvements or additions donated to the Garden, such as tables, benches, wood for raised planting beds, materials for paths and patios, and fences.

14. **COMPLIANCE WITH LAWS:** The Elk Grove Community Garden agrees to faithfully perform and carry out the provisions of this agreement, and to cause the Elk Grove Community Garden and its agents and employees to comply with all federal, state and local laws and ordinances applicable to the Garden and the Elk Grove Community Garden's use of the Garden property.

15. **NOTICES AND CONTACT PERSON:** All correspondence, including notices described in this license agreement, shall be sent to the contact persons and addresses listed below. The Elk Grove Community Garden will promptly notify CITY of any change in the contact person, address or telephone number. Notice to the contact person for the Elk Grove Community Garden is also notice to the Elk Grove Community Garden.

(A) For CITY:

City Manager
8401 Laguna Palms Way
Elk Grove, CA, 95758

(B) For the Elk Grove Community Garden and Learning Center:

Lisa Williams, Director
Elk Grove Community Garden and Learning Center
10025 Hampton Oak Drive
Elk Grove, CA, 95624



16. **HEADINGS:** The paragraph headings contained in this agreement are provided for convenience only and do not enlarge or limit the scope or meaning of the various and several paragraphs in the agreement.

17. **SEVERABILITY:** If one or more of the provisions of this license agreement are held unenforceable for any reason, each and all other provisions will remain in full force and effect.

18. **ENTIRE AGREEMENT:** This license agreement represents the entire agreement between the parties and cannot be changed or modified except in writing and signed by CITY and the Elk Grove Community Garden.

IT IS SO AGREED:

CITY OF ELK GROVE

**ELK GROVE COMMUNITY GARDEN
AND LEARNING CENTER**

DATED: _____

DATED: _____

Laura S. Gill, City Manager
City of Elk Grove

Lisa Williams, Director
Elk Grove Community Garden and
Learning Center

Approved as to form:

Susan Cochran – City Attorney

**CERTIFICATION
ELK GROVE CITY COUNCIL RESOLUTION NO. 2009-250**

STATE OF CALIFORNIA)
COUNTY OF SACRAMENTO) **ss**
CITY OF ELK GROVE)

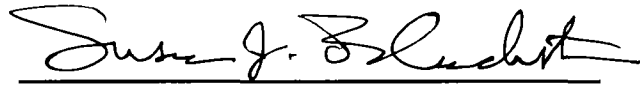
I, Susan J. Blackston, City Clerk of the City of Elk Grove, California, do hereby certify that the foregoing resolution was duly introduced, approved, and adopted by the City Council of the City of Elk Grove at a regular meeting of said Council held on December 9, 2009 by the following vote:

AYES : COUNCILMEMBERS: *Hume, Scherman, Cooper, Davis, Detrick*

NOES: COUNCILMEMBERS: *None*

ABSTAIN : COUNCILMEMBERS: *None*

ABSENT: COUNCILMEMBERS: *None*



***Susan J. Blackston, City Clerk
City of Elk Grove, California***